therefore on this Ordinance which merely affirms in general the existing law and provides a mode of procedure.

So understood Sections 3 and 4 affirm the law. The former is inconsistent with any suggestion that such decrees are inherently bad and there would be no need to set them aside. It would be equally inconsistent if such decrees could not be pleaded or relied on, as here, for such suits are the test of their validity. Section 5 does import something new. A court regarding an act as valid would not substitute its own for it. The word "may" is used in both sub-sections (1) and (4). The language is permissive, as to both the applicant and the court, and there is nothing to suggest that compliance is sanctioned by invalidity in default. Section 7 does profess to limit the validity of such acts. As it clearly affects and abridges existing rights it must be strictly construed if necessary. The words however appear to me to be clear; it reads "No Japanese decree shall be pleaded by way of counterclaim or set off or otherwise etc". A plaintiff avers and "pleaded", though more widely used, is in its exact meaning applied to the defence. The legislator goes on to specify "counterclaim" and "set off" not strictly pleas but fresh matters imported by the defence. Then come the words "or otherwise". It is one of the best established rules of interpretation that where particular words are followed by general words these must be construed ejusdem generis with those preceding. This rule seems clearly to apply here. Nothing but matters of defence are mentioned, and they are set out in terms of art.

The case on which the respondent relied does not apply. There the court was construing a contract. The general words were the same as here but were preceded by one word only, and were clearly used in extension of it. It was sought to read into the contract the regulations of the Railway Company which certainly supported the wider construction. The Court said it was unnecessary as the contract was sufficiently clear. It was clear that the railway would wish to limit their liability for delay and the words were adequate to express that intention. Here it is a question of the extent to which the legislator intends to abridge existing rights. Why decrees should not be available in defence I don't know, but I am equally ignorant of why they should not be used as the appellant seeks to use his here. The words seem to me perfectly clear and susceptible of only one interpretation. In my opinion the learned District Judge was wrong in holding that the Ordinance invalidates all Japanese decrees in legal proceedings. Had that been the purpose one would have expected it to be put in the forefront of the enactment.

I therefore think that the judgment given must be reversed, and that the appellant is entitled to the order for which he asks, with mesne profits and costs of the hearing and appeal.

Appeal Allowed.

SINGAPORE REPORTS.

VEERASAMY KRISHNASAMY AND ANOR. v. JANNAKI AMMAL.

[Original Civil Juris. (Brown, J.) February 13, 1947]

Will — Construction — Failure of objects of devise — Cyprés doctrine — Position of Trustees who are also beneficiaries.

This was an Originating Summons for the determination of two questions arising out of clause 8 of the Will of Narainasamy Veerasamy (deceased). Clause 8 of the Will was as follows:—"I give devise and bequeath unto my trustees all my land and house situate at Bedok Road, Singapore, in trust to hold and manage the same for the period of twenty-one years after the death of the survivor of my sons, Rajagopal, Krishnasamy, Sobrielo and my grandson, Ramakrishna, and during such period to permit the same to be used as a family burial ground for myself and such members of my family as my trustees shall think fit and during the said period I direct my trustees to collect the rents and profits of the said land and house and out of such rents and profits to pay the assessment and quit rent (if any) and repairs to the said house and to pay the balance (if any) to my sons in equal share".

The application for a burial ground licence was refused by the Colonial Secretary. The questions for the determination for the Court were (i) whether the object of the devise contained in Clause 8 have failed by reason of that refusal and the consequent impossibility of carrying out the trust to permit the land to be used as a burial ground or whether the trust can be saved by the application in some form of the cypres doctrine and (ii) whether the trust for the burial having failed the land and house fell into residue.

Held, (1) that the cypres doctrine will only be applicable if a general charitable intention is disclosed and that as the trust in the present case was not a charitable trust, no cypres scheme can be permitted and applied to save the trust; (2) that the trust having failed the land and house fall into the residue.

Observations on the position of the Trustees who are also beneficiaries.

Cases referred to :—

(1) *Re White's Trusts*, 33 Ch. D. 449.
(2) *Cheang Tew Muey and Others v. Cheang Cheow Lian Neo and Others* (1930) S.S.L.R. 58.
(3) *Commissioners for Special Purposes of Income Tax v. Pemsel* (1891) A.C. 583.
(4) *Saunders v. Vautier*, 41 E.R. 482.
(5) *Gosling v. Gosling*, 70 E.R. 423.
(6) *Wharton v. Masterman* (1895) A.C. 186.

ORIGINATING SUMMONS.

N. A. Mallal for the Plaintiffs.

S. C. Goho appointed by Court to represent certain class of persons.

Brown, J. : — This is an Originating Summons in which two questions arising out of clause 8 of the Will of Narainasamy Veerasamy, deceased, have to be determined. Clause 8 of the Will reads as follows :—

> 8. I give devise and bequeath unto my trustees all my land and house situate at Bedok Road, Singapore in trust to hold and manage the same for the period of twenty-one years after the death of the survivor of my sons RAJAGOPAL, KRISHNASAMY, SOBRIELO and my grandson RAMAKRISHNA, and during such period to permit the same to be used as a family burial ground for myself and such members of my family as my trustees shall think fit and during the said period I direct my trustees to collect the rents and profits of the said land and house and out of such rent and profits to pay the assessment and quit rent (if any) and repairs to the said house and to pay the balance (if any) to my sons in equal shares.

The application for a burial ground licence was refused by the Colonial Secretary in a letter dated 19th November 1946. And the first question for dermination is whether the objects of the devise contained in clause 8 have failed by reason of that refusal and the consequent impossibility of carrying out the trust to permit the land to be used as a burial ground, or whether the trust can be saved by the application in some form of the cypres doctrine. The cyprés doctrine would only be applicable if a general charitable intention is disclosed, *Re White's Trusts*[1] which is referred to in *Cheang Tew Muey and Others v. Cheang Cheow Lian Neo and Others*[2]. I can see no such intention disclosed in this clause. In expressing that view I have in mind the four principal divisions into which the word "charity" in its legal sense was divided by Lord Macnaughten in the *Commissioners for Special Purposes of Income Tax v. Pemsel*[3]. The only division which could have any bearing on this case is the last, viz. "trusts for other purposes beneficial to the community". The trust is to permit the land to be used as a *family* burial ground for the testator himself and such members of his family as the trustees think fit. The class of beneficiaries is therefore restricted to certain members of the testator's family. I have no doubt that this is not a charitable trust, that no cyprés scheme can therefore be formulated and applied to save this trust, and the trust regarding the burial ground fails.

But there is another trust contained in clause 8 of the Will. It is to collect the rents and profits of the land and house and, after defraying certain outgoings, to pay the balance to the testator's sons in equal shares. And this gives rise to the second question for determination; whether the trust for the burial ground having failed the land and house fall into residue. The ground for this contention is that the beneficiaries who are to receive the rents and profits under clause 8, and who are referred to in that clause as my sons', are the same persons who become entitled to this property absolutely (after the expiration of the period specified in clause 8) by virtue of the residuary clause 11, where they are referred to as "my male children living at my death". Such authorities as *Saunders v. Vautier*[4], *Gosling v. Gosling*[5] and *Wharton v. Masterman*[6] are clear upon the principle that where a testator has given the corpus to a devisee, the Court will recognise such devisee's immediate right to the corpus notwithstanding any directions by the testator that he is only to enjoy the income of the property until after the expiration of a certain period or until the happening of a certain event, unless the testator has not merely expressed a clear intention that the devisee is only to have the income of the property until the period has expired or the event has happened but has, during the interval, given the property for the benefit of another. In the light of those authorities it seems to me that the plaintiffs are entitled to the order asked for in paragraph 3 of the Summons.

Mr. Goho was appointed by a court order dated 6th December 1946 "to represent all persons claiming to be entitled to be buried on the land the subject-matter of the application and or are interested in maintaining that the objects of the devise contained in paragraph 8 of the will have not failed". This Court order appointing Mr. Goho was made upon the application of the plaintiffs in paragraph 4 of their Originating Summons. In the course of his argument Mr. Goho took an interesting point on the position of Mr. Mallal, who appears for the plaintiffs. The plaintiffs are expressed to be "the Executors and Trustees of the Will and Estate of Narainasamy Veerasamy". But they are also the beneficiaries. They are, with their brother Rajagopal, the person who will benefit by an order made in the terms of para. 3 of the Summons. I may say that I have no doubt that, even though it was not to be expected that Rajagopal would enter an appearance, he ought to have been served; and I made an order to that effect. He has not entered an appearance. Mr Goho's point is that the plaintiffs in their capacity as trustees should be strictly neutral in this matter. Having taken out their Originating Summons for directions in their capacity as trustees they should not, through their counsel, proceed to argue their own cause as beneficiaries. Their function as trustees (seeking the court's

directions) must be kept entirely distinct from their function as beneficiaries (seeking an order in the terms of para. 3 of the Summons). This would involve, as I understand it, instructing two counsel, one to represent them as trustees and the other to represent them as beneficiaries. I think it is impossible to lay down any general rule which would be applicable to every case in which the trustees of a will have an interest as beneficiaries in the questions which are to be determined. Each case must depend upon its own facts, and the trustees in each case must act as they think proper having regard to the responsibilities of their position as trustees; and in case of doubt they can apply to the court for directions. But in this case it seems to me that they did all that was required of them in serving all persons who might be interested and in asking the Court to appoint counsel to argue the case for the other side. The point is that they have ensured that the Court, before giving its directions, had the advantage of having both sides fully argued. A further matter which it was necessary for the trustees to consider was the question of who would be damnified by an order made in the terms of para. 3 of the summons. With regard to the pecuniary trust in clause 8 only the two trustees and Rajagopal are concerned. Whether they take an absolute interest in the property now or whether they receive the rents and profits until after the period has expired and then take it absolutely is a question in which no one is interested except themselves and Rajagopal. As for the burial ground trust, I suppose it is possible that if I had held this to be a charitable trust some unspecified person or persons might have benefitted from the application in some way of the cypres doctrine. But before this could happen it was necessary to establish the proposition that the trust was a charitable trust. And in order that that proposition might be argued before the Court the trustees secured the appointment of Mr. Goho as counsel to argue it. Therefore it seems to me that in this case the trustees have done all that the responsibilities of their position demanded them. But I must make it plain that I am only expressing my view on the facts of this particular case.

The answers to the two questions contained in paragraphs (1) and (2) of the Originating Summons are in the affirmative, and an Order will issue in the terms of paragraphs 3 thereof.

Costs on the Higher Scale to be taxed between Solicitor and Client and paid out of the estate.

Order Accordingly.

HO KIAT SWEE v. REX.

[Appellate Crim. Juris. (Jobling, J.) December 18, 1946]

Opium and Chandu Proclamation, No. 43 of 1946 — Sufficiency of certificate to show that article is chandu.

In this case the prosecution put in a certificate to show that an article in question was chandu. The certificate did not show that the chemist who signed the certificate analysed the articles sent to him or any one of them; nor did it show that when he referred to the articles as Chandu he was aware of the technical definition of the word "Chandu" in the Proclamation and was satisfied that it came within that definition.

Held, that the certificate was an insufficient one and as it was the only evidence for the prosecution that the article found on the accused's premises was chandu, the result was that the prosecution had not proved its case and the conviction must be quashed.

MAGISTRATE'S APPEAL.

D. K. Walters and *Wee Chong Jin* for the Appellant.

A. W. Bellamy for the Respondent.

Jobling, J. : — The certificate in this case is an extremely unsatisfactory one. It is the only evidence for the Prosecution that the article found on the accused's premises is Chandu within the meaning of this term in the Opium and Chandu Proclamation No. 43 of 1946.

I think it is a sufficient certificate of a Chemist of the Department of Chemistry and so far complies with the provisions of the law but it does not show that the Chemist who signed the certificate analysed the articles sent to him or any one of them. Further it does not show that when he refers to the articles as Chandu he was aware of the technical definition of the word "Chandu" in the proclamation (paragraph 23) and was satisfied that it came within that definition.

In the circumstances I take the view that the Prosecution has not proved its case in the matter and my only course is to quash the conviction and the conviction is quashed accordingly.

Conviction Quashed.

JANGIR SINGH v. REX.

[Appellate Criminal Jurisdiction (Murray-Aynsley, C.J. April 30, 1947]

Evidence Ordinance, Section 25 — Distinction between a confession and admission.

This was an appeal against a conviction for possession of firearms and explosives. The evidence showed that a police officer found two revolvers. Later it was alleged that the appellant came to the police officer and asked him "Have you taken my pistol or not?" The only point argued on the appeal was whether this amounted to a confession.

Held, that as the statement in the present case was sufficient to discharge the burden of proof on the pro-